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No. 85-5189

Supreme Court, U.S.

FILED

DEC 9 1985

JOSEPH F. SPANIOLO, JR.
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1985

LAMONT JULIUS McLAUGHLIN, PETITIONER

v.

UNITED STATES OF AMERICA, RESPONDENT

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FOURTH CIRCUIT

JOINT APPENDIX

FRED WARREN BENNETT
Federal Public Defender
STEPHEN J. CRIBARI *
Assistant Federal Public Defender
1012 Mercantile Bank & Trust Bldg.
Two Hopkins Plaza
Baltimore, Maryland 21201
Telephone: 301/962-3962
FTS/922-3962

Counsel for Petitioner

* Counsel of Record

CHARLES FRIED
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217
Counsel for Respondent

PETITION FOR CERTIORARI FILED AUGUST 5, 1985
CERTIORARI GRANTED NOVEMBER 4, 1985

2087

TABLE OF CONTENTS

	Page
Docket Entries	1
Indictment	4
Partial Transcript September 7, 1984	7
Judgment and Commitment Order	14
Decision of the United States Court of Appeals for the Fourth Circuit	16
Order of the Supreme Court of the United States grant- ing certiorari and leave to proceed in forma pauperis..	18

RELEVANT DOCKET ENTRIES

DATE	No.	PROCEEDINGS
1984		
July 31	1	Indictment for violation of U.S.C., Title 18, Sections 2113(a) (f), 2113(b) (f), 2113 (d) (f) & 2—Bank Robbery; Bank Larceny, Assault during bank Robbery; Aiding & Abetting.
" "	7	Magistrate's Papers (Burgess) as to defendant <i>McLAUGHLIN</i> consisting of Complaint, Affidavit and Report of Proceedings.
" "	8	Financial Affidavit as to defendant <i>McLAUGHLIN</i> .
" "	9	Order (Klein, U.S. Mag.) dated July 26, 1984 "APPOINTING" Federal Public Defender as counsel on behalf of defendant <i>McLAUGHLIN</i> .
" "	10	Order (Klein, U.S. Mag.) dated July 26, 1984 that defendant <i>McLAUGHLIN</i> execute a bond in the amount of \$500,000 on conditions as therein set forth.
" "	11	Order (Klein, U.S. Mag.) dated July 26 1984 "REMANDING" defendant <i>McLAUGHLIN</i> to the Custody of the United States Marshall as therein set forth.
August 10	—	Defendant <i>McLAUGHLIN</i> arraigned and plead "NOT GUILTY" as to Count No.s 1 thru 3.
Sept. 7	12	Waiver of defendant <i>McLAUGHLIN</i> of right to Trial by Jury.

DATE	No.	PROCEEDINGS
1984		
Sept. 7	—	Defendant <i>McLAUGHLIN</i> rearraigned and plead "GUILTY" as to Count Nos. 1 & 2 and "NOT GUILTY" as to Count No. 3 which was accepted by the Court.
" "	—	Case tried before the Court as to defendant <i>McLAUGHLIN</i> as to Count No. 3 only.
" "	(—)	Oral Motion of defendant <i>McLAUGHLIN</i> for Judgment of ACQUITTAL—"DENIED".
" "	(—)	Argument of Counsel.
" "	(—)	VERDICT as to defendant <i>McLAUGHLIN</i> : "GUILTY" as to Count No. 3.
" "	(—)	Imposition of sentence suspended pending presentence investigation as to defendant <i>McLAUGHLIN</i> .
Oct. 10	(—)	Sentencing Postponed as to defendant <i>McLAUGHLIN</i> .
"	31 (13)	JUDGMENT AS TO DEFENDANT <i>McLAUGHLIN</i> : The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Twenty (20) years as to Count No. 1, and for imprisonment for a term of eight (8) years as to Count 2, and for imprisonment for a term of Twenty-Five (25) years as to Count 3, said terms of imprisonment as to Counts 1 & 2 are to run concurrent with each other and concurrent with the term of imprisonment imposed on Count 3. Defendant shall become eligible for release on parole after serving one-third (1/3) of such term of imprisonment, pursuant to U.S.C., Title 18, Section 4205 (a). Order (Howard, J.) dated October 29, 1984.

DATE	No.	PROCEEDINGS
1984		
Nov. 9	(15)	Notice of Appeal of Defendant <i>McLAUGHLIN</i> .
" "	(16)	Transcript purchase order form (copy) from Defendant <i>McLAUGHLIN</i> , ordering transcript of proceedings as therein set forth.
1985		
Mar. 7	(17)	Transcript of Proceedings before the Court (Howard, J.) on September 7, 1984.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Criminal No. JH-84-00342

UNITED STATES OF AMERICA

v.

RONALD TYRONE HALL

and

LAMONT JULIUS McLAUGHLIN

(Bank Robbery, 18 U.S.C. Sections 2113(a),
(b), (d) and (f); Aiding and Abetting, 18
U.S.C. Section 2)

INDICTMENT

The Grand Jury for the District of Maryland charges:

On or about July 26, 1984, in the State and District of
Maryland,

RONALD TYRONE HALL

and

LAMONT JULIUS McLAUGHLIN

did by intimidation, take from the presence of Louise Shunkwiler, Teresa Mooney and Annetta Askins, employees of the Equitable Bank, 6029 Radecke Avenue, Baltimore, Maryland, a bank, the deposits of which were then insured by the Federal Deposit Insurance Corporation, money in the amount of \$3,400.00, more or less, belonging to and being in the care, custody, control, management, and possession of said bank; in violation of Sections 2113(a), (f), and 2, Title 18, United States Code.

COUNT TWO

And the Grand Jury for the District of Maryland further charges:

On or about July 26, 1984, in the State and District of
Maryland,

RONALD TYRONE HALL

and

LAMONT JULIUS McLAUGHLIN

did take and carry away, with intent to steal from the Equitable Bank, 6029 Radecke Avenue, Baltimore, Maryland, a bank, the deposits of which were then insured by the Federal Deposit Insurance Corporation, money in the amount of \$3,400.00, more or less, belonging to and being in the care, custody, control, management, and possession of said bank; in violation of Sections 2113(b), (f), and 2, Title 18, United States Code.

COUNT THREE

And the Grand Jury for the District of Maryland further charges:

On or about July 26, 1984, in the State and District of
Maryland,

RONALD TYRONE HALL

and

LAMONT JULIUS McLAUGHLIN

in committing the offenses charged in the first two counts of this indictment, did assault Louise Shunkwiler, Teresa Mooney and Annetta Askins, by pointing a firearm at them and in their direction, the said persons being in the Equitable Bank, 6029 Radecke Avenue, Baltimore, Maryland, a bank, the deposits of which were then insured by the Federal Deposit Insurance Corporation; in violation

of Sections 2113(d), (f), and 2, Title 18, United States Code.

/s/ J. Frederick Motz
J. FREDERICK MOTZ
United States Attorney

A TRUE BILL:

Foreman

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Criminal No. JH-84-00342

UNITED STATES OF AMERICA

—v—

LAMONT JULIUS McLAUGHLIN

PARTIAL TRANSCRIPT

The above entitled case came on for re-arraignment before His Honor, Joseph C. Howard, on Friday, September 7, 1984, at 9:00 a.m., at Baltimore, Maryland.

[2] **PROCEEDINGS**

THE COURT: Mr. Better, would you like to call the case?

MR. BETTER: Yes. The government calls United States of America versus Lamont Julius McLaughlin for re-arraignment, Counts 1 and 2 of the indictment, and for a nonjury trial as to Count 3.

As counsel have advised the Court in chambers this morning, this matter was scheduled for anticipated re-arraignment on all three counts of the indictment. Counsel for Mr. McLaughlin, in order to preserve a legal issue that that he believes exists in the case, based upon the fact that the government's evidence would not show that the gun that was used in the robbery and was pointed at persons in the bank was loaded, that that may not be sufficient evidence for a conviction under Count 3.

The Fourth Circuit law, based upon United States v. Bennett, holds that the government does not have to prove

that the gun is loaded. Counsel believes that there are cases in other circuits which are contrary to the Bennett case and wishes to preserve that issue, so the proceeding we propose to follow is to have a guilty plea as to Counts 1 and 2 of the indictment, a not guilty plea as to Count 3. The Court would then, on the basis of a statement of facts presented by the government in support of the guilty plea, [3] rule on the sufficiency of the evidence and convict or not convict Mr. McLaughlin as to Count 3, after counsel has had an opportunity to raise that legal issue.

I understand from counsel Mr. McLaughlin is prepared to waive his right to a jury trial and will execute the appropriate form.

MR. CRIBARI: Steven Cribari, and with me at counsel table is Thomas Mason. Mr. Better's representations are exact and we agree.

. . . .

[15] THE COURT: Now, I am going to ask you gentlemen to have a seat, and call on Mr. Better to share the evidence that would be produced in this case, if the case went to trial.

MR. BETTER: Your Honor, the government's evidence [16] would show that on July 26th, 1984, at approximately 9:30 a.m. in the morning, the Equitable Bank at Cedonia Mall, Radecke Avenue in Baltimore City, was robbed by two black males, both of whom wore stocking masks and gloves, of \$3400 in U.S. currency.

The two individuals entered the bank. One individual, which the evidence will show is the defendant in the case here today, Lamont Julius McLaughlin, displayed a dark handgun and ordered everyone in the bank to put their hands up and not to move. This individual remained in the lobby area and held the employees and customers in the bank at gun point.

The second robber vaulted the counter and ordered teller Theresa Mooney to open the second drawer at one

of the teller stations. He removed the money from the drawer, then proceeded to order Annetta Askins, another employee of the bank, to open the second drawer of her teller station, and the money was removed from that drawer.

According to witnesses in the bank, the vaulter appeared to notice a Baltimore City police officer outside of the bank, returned over the counter, and fled with the lobby man out of the bank. Witnesses in the bank observed that the two men as they ran out of the bank were confronted by a Baltimore City police officer.

Officer Anthony Warble, W-A-R-B-L-E, would testify [17] that he was on a routine patrol on July 26, and that as part of his duties he was making a routine check of this particular bank, and as he approached the bank he observed an individual coming from the bank with a stocking mask on. He drew his service revolver and at gun point ordered that person to halt.

Very shortly after that, a second individual ran out of the bank and he also was held at gun point until support personnel arrived.

Officer Warble recovered from these two individuals a brown paper bag which the witnesses in the bank would say was used to place the money in. The bag was found with \$3400 in U.S. currency with the bank bands on it. He recovered the stocking mask; two papers of rubber gloves; the handgun which was displayed by Mr. McLaughlin, the person in the lobby, which the evidence would show was not loaded; a black hat which was worn by the vaulter, according to witnesses that were in the bank.

The individual who was in the lobby and who wore a navy blue or dark hooded sweat shirt identified himself, that is Mr. McLaughlin identified himself to Officer Warble as Leslie Williams. Later at the Baltimore City Police Department, when photographs showed that Mr. McLaughlin was not Leslie Williams, Mr. McLaughlin admitted that he was Mr. McLaughlin, and then after

being advised of his rights by [18] Special Agent Steve Clary, FBI Mr. McLaughlin admitted he understood his rights and stated, "You got me dead up in this one and I confess to today's robbery."

He further admitted that he was the lobby man and stated that Ronald Tyrone Hall, who was the co-defendant in this case, was an individual that he had met at the Volunteers of America approximately one year ago.

The government would also prove that the deposits of the Equitable Bank Bank at Cedonia Mall were ensured by the F.D.I.C. on July 26th, 1984. That would be the proof if this case would have gone to trial on Counts 1 and 2, and it would also be the proof offered by the government in support of Count 3.

THE COURT: Mr. Cribari?

MR. CRIBARI: We stipulate to the evidence insofar as we need to stipulate to acknowledge. We acknowledge the proffer insofar as we need to acknowledge the proffer.

At this time as far as Count 3 is concerned, I would make a motion for judgment of acquittal.

(Discussion held off the record.)

THE COURT: Maybe you would like to waive the jury trial. I think we have a form here for you, Mr. Cribari.

(Mr. Cribari complies with request and defendant complies with request.)

MR. CRIBARI: The defendant has waived his right [19] to jury trial in writing. I would move the Court for judgment of acquittal on the third count, based in part on my reading of the case of United States versus Potts, P-O-T-T-S, 548 Fed.Supp. 1239 from the Northern District of California, 1982. That case discusses the law in the Fourth Circuit under the case of United States versus Bennett. It also discusses the law in other circuits concerning that applicable to Count 3 of the indictment and indicates that the question is not settled

whether an unloaded gun is sufficient evidence on which to predicate a conviction under Count 3, and I would ask Court to dismiss that count at this time.

THE COURT: All right. Mr. Better, would you like to be heard on the motion?

MR. BETTER: Simply to say, Your Honor, that the government's proffer would show that—has shown that Mr. McLaughlin pointed a firearm at the bank employees to hold them at bay while the vaulter removed the money, and under the law the Fourth Circuit has set forth in the Bennett case the government is not required to prove, to prove an assault under Count 3 of the indictment, that the gun was, in fact, loaded at the time.

THE COURT: All right. Stand up, gentlemen. The defendant's motion for judgment of acquittal is denied. The Court finds the defendant guilty on the statement of facts as [20] given by the government and agreed to by the defendant.

Is it still your desire, Mr. McLaughlin, to have the Court accept your plea in this case?

THE DEFENDANT: Yes.

THE COURT: I cautioned you at the outset of this hearing that you were going to be answering questions under oath. At this point let me advise you once again, you have a right to augment, to change, to amplify, or diminish any answer or answers that you have given the Court in order to bring those answers or a particular answer within the realm of truth.

Is there any answer at all that you would like to change, in order to make that answer truthful? You can make the change without any fear of penalty or prosecution of any kind or description.

Is there any answer that you would like to change to make truthful?

THE DEFENDANT: No.

THE COURT: All right. Knowing that, it is your desire to have the Court accept your plea, one last time; is that correct?

THE DEFENDANT: Yes.

THE COURT: Mr. Cribari, is there any reason why your client's plea of guilty should not be accepted at this time?

[21] THE DEFENDANT: None that I know of.

THE COURT: The plea of guilty is accepted upon the express finding by Court that the defendant understands his rights in this matter, he understands the consequences that can come from his plea, and with that understanding is acting of his own free will in offering a plea of guilty for the reason that he, by his own testimony and by his agreement with the proffered testimony of the Assistant U.S. Attorney, is, in fact, guilty as charged in the indictment. Mr. Better.

MR. BETTER: Your Honor, I have one point and one request. Just so that it is clear, in checking my notes—if I didn't state it, I want to make it clear and would ask the Court take into consideration—as far as the statement of facts is concerned, that the firearm was pointed by Mr. McLaughlin, the evidence would show, at the—both employees and customers in the bank, including the people who are named in the indictment, the two people that I mentioned, Theresa Mooney and Annetta Askins, and that I may have made a general statement that he pointed the firearm at the employees and at the customers; and I refer to the fact that Askins and Mooney were required to open their teller drawers. I just want to make it clear the firearm was pointed at them during the course of the robbery. The witnesses would so testify, and that's what I meant to say if I didn't say that.

[22] THE COURT: Any objection to this addition to the statement of facts as given by Mr. Better?

MR. CRIBARI: No, Your Honor.

THE COURT: I think he did make a generic statement.

MR. CRIBARI: I understood him to do so. I think even the generic statement covered what he's now amend-

ing specifically. Since our issue is one of solely whether the gun was or was not loaded, and whether or not that is legally sufficient on which to predicate guilt, I do not object to the amendment.

MR. BETTER: The request I have is that the Court specifically ask the defendant whether or not he agrees with the statement of facts in support of the guilty plea and whether he's pleading guilty because he is in fact guilty of the crimes charged in Counts 1 and 2 of the indictment.

THE COURT: Did you understand the question?

THE DEFENDANT: Yes.

THE COURT: What is your answer?

THE DEFENDANT: That's true. I am pleading guilty to the indictment because it is in accord with the incident that happened.

THE COURT: Because it is in accord?

THE DEFENDANT: With the incident that happened.

. . . .

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

No. JH-84-00342

UNITED STATES OF AMERICA

vs.

LAMONT JULIUS McLAUGHLIN
DEFENDANT No. 02

JUDGMENT AND COMMITMENT ORDER

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date October 29, 1984

☐ WITHOUT COUNSEL. However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel

☒ WITH COUNSEL. Stephen Cribari, AAFP

PLEA

☒ GUILTY, and the court being satisfied that there is a factual basis for the plea, as to Counts 1 & 2

☐ NOLO CONTENDERE, ☐ NOT GUILTY

FINDING & JUDGMENT

There being a COURT verdict of ☒ GUILTY, as to Count No. 3.

Defendant has been convicted as charged of the offense(s) of Count 1—U.S.C., Title 18, Sec-

tions 2113(a)(f) & 2—Bank Robbery; Aiding & Abetting; Count 2—U.S.C., Title 18, Sections 2113(b)(f) & 2—Bank Larceny; Aiding & Abetting; Count 3—U.S.C., Title 18, Section 2113(d)(f) & 2—Assault during Bank Robbery; Aiding & Abetting.

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Twenty (20) years as to Count 1, and for imprisonment for a term of Eight (8) years as to Count 2, and for imprisonment for a term of Twenty-Five (25) years as to Count 3, said terms of imprisonment as to Counts 1 & 2 are to run concurrent with each other and concurrent with the term of imprisonment imposed on Count 3. Defendant shall become eligible for release on parole after serving one-third ($\frac{1}{3}$) of such term of imprisonment, pursuant to U.S.C., Title 18, Section 4205(a).

I hereby attest and certify on October 31, 1984 that the foregoing document is a full, true and correct copy of the original on file in my office and in my legal custody.

Signed by ☒ U.S. District Judge

PAUL R. SCHLITZ
Clerk, U.S. District Court
District of Maryland

/s/ Etta M. Stallings
Deputy

JOSEPH C. HOWARD
Date October 29, 1984

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 83-5268 (L)

UNITED STATES OF AMERICA, APPELLEE

versus

LAWRENCE EDWARD JOHNSON, JR., ETC., APPELLANT

No. 84-5335

UNITED STATES OF AMERICA, APPELLEE

versus

LAMONT JULIUS McLAUGHLIN, APPELLANT

Appeals from the United States District Court
for the District of Maryland, at Baltimore
Joseph C. Howard, District Judge

[Filed June 5, 1985]

DECISION

Upon consideration of appellee's motion for summary affirmance in *United States v. Lamont Julius McLaughlin*, appeal no. 84-5335 and for deconsolidation of that case from *United States v. Lawrence Edward Johnson*,

Jr., a/k/a Sonny, appeal no. 83-5268 (L) and the appellants' response thereto,

IT IS ORDERED that the motion for summary affirmance in appeal no. 84-5335 and for deconsolidation of the appeal from 83-5268 (L) is granted.

Entered at the direction of Judge Chapman with the concurrence of Judge Sneed and Judge Haynsworth.

For the Court,

/s/ John M. Greacen
Clerk

SUPREME COURT OF THE UNITED STATES

No. 85-5189

LAMONT JULIUS McLAUGHLIN, PETITIONER

v.

UNITED STATES

**ORDER GRANTING CERTIORARI AND
LEAVE TO PROCEED IN FORMA PAUPERIS**

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Fourth Circuit

ON CONSIDERATION of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted.

November 4, 1985